

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JANE DOE 2, *et al.*,

Plaintiffs,

v.

LLOYD J. AUSTIN, III¹, in his official
capacity as Secretary of Defense, *et al.*,

Defendants.

Civil Action No. 17-cv-1597 (CKK)

DEFENDANTS' NOTICE OF EXECUTIVE ORDER

Defendants hereby notify the Court that on January 25, 2021, the President issued the attached Executive Order regarding military service by transgender individuals. *See* Exhibit 1 (Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform (Jan. 25, 2021), *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-enabling-all-qualified-americans-to-serve-their-country-in-uniform/>).

January 25, 2021

Respectfully Submitted,

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Acting Assistant Attorney General
Civil Division

ALEXANDER K. HAAS
Branch Director

ANTHONY J. COPPOLINO
Deputy Director

/s/ Andrew E. Carmichael

¹ Pursuant to Federal Rule of Civil Procedure 25(d), Lloyd J. Austin, III has been substituted for Christopher C. Miller as Secretary of Defense.

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BRIEFING ROOM

Executive Order on Enabling All Qualified Americans to Serve Their Country in Uniform

JANUARY 25, 2021 • PRESIDENTIAL ACTIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. All Americans who are qualified to serve in the Armed Forces of the United States (“Armed Forces”) should be able to serve. The All-Volunteer Force thrives when it is composed of diverse Americans who can meet the rigorous standards for military service, and an inclusive military strengthens our national security.

It is my conviction as Commander in Chief of the Armed Forces that gender identity should not be a bar to military service. Moreover, there is substantial evidence that allowing transgender individuals to serve in the military does not have any meaningful negative impact on the Armed Forces. To that end, in 2016, a meticulous, comprehensive study requested by the Department of Defense found that enabling transgender individuals to serve openly in the United States military would have only a minimal impact on military readiness and healthcare costs. The study also concluded that open transgender service has had no significant impact on operational effectiveness or unit cohesion in foreign militaries.

On the basis of this information, the Secretary of Defense concluded in 2016 that permitting transgender individuals to serve openly in the military was consistent with military

readiness and with strength through diversity, such that transgender service members who could meet the required standards and procedures should be permitted to serve openly. The Secretary of Defense also concluded that it was appropriate to create a process that would enable service members to take steps to transition gender while serving.

The previous administration chose to alter that policy to bar transgender persons, in almost all circumstances, from joining the Armed Forces and from being able to take steps to transition gender while serving. Rather than relying on the comprehensive study by a nonpartisan federally funded research center, the previous administration relied on a review that resulted in a policy that set unnecessary barriers to military service. It is my judgment that the Secretary of Defense's 2016 conclusions remain valid, as further demonstrated by the fact that, in 2018, the then-serving Chief of Staff of the Army, Chief of Naval Operations, Commandant of the Marine Corps, and Chief of Staff of the Air Force all testified publicly to the Congress that they were not aware of any issues of unit cohesion, disciplinary problems, or issues of morale resulting from open transgender service. A group of former United States Surgeons General, who collectively served under Democratic and Republican Presidents, echoed this point, stating in 2018 that "transgender troops are as medically fit as their non-transgender peers and that there is no medically valid reason — including a diagnosis of gender dysphoria — to exclude them from military service or to limit their access to medically necessary care."

Therefore, it shall be the policy of the United States to ensure that all transgender individuals who wish to serve in the United States military and can meet the appropriate standards shall be able to do so openly and free from discrimination.

Sec. 2. Revocation. The Presidential Memorandum of March 23, 2018 (Military Service by Transgender Individuals), is hereby revoked, and the Presidential Memorandum of August 25, 2017 (Military Service by Transgender Individuals), remains revoked.

Sec. 3. Agency Roles and Responsibilities. In furtherance of the policy described in section 1 of this order, I hereby direct the following:

(a) The Secretary of Defense, and Secretary of Homeland Security with respect to the Coast Guard, shall, after consultation with the Joint Chiefs of Staff about how best to

implement this policy and consistent with applicable law, take all necessary steps to ensure that all directives, orders, regulations, and policies of their respective departments are consistent with this order. These steps shall include establishing a process by which transgender service members may transition gender while serving, along with any further steps that the Secretary of Defense and Secretary of Homeland Security deem appropriate to advance the policy described in section 1 of this order.

(b) The Secretary of Defense shall:

- (i) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity;
- (ii) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity;
- (iii) issue guidance to the Secretaries of each military department regarding the correction of the military records of individuals described in subsection (b)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and
- (iv) direct the Secretaries of each military department to provide supplemental guidance, subject to the approval of the Secretary, to the boards for the correction of military records, instructing such boards on how to review applications for the correction of records of individuals described in subsection (b)(ii) of this section. Where appropriate, the department concerned shall offer such individuals an opportunity to rejoin the military should they wish to do so and meet the current entry standards.

(c) The Secretary of Homeland Security with respect to the Coast Guard shall:

- (i) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service, on the basis of gender identity or under circumstances relating to their gender identity;
- (ii) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service, on the basis of gender

identity or under circumstances relating to their gender identity;

(iii) issue guidance regarding the correction of the military records of individuals described in subsection (c)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and

(iv) provide supplemental guidance to the Board for Correction of Military Records of the Coast Guard, instructing the Board on how to review applications for the correction of records of individuals described in subsection (c)(ii) of this section. Where appropriate, the Secretary of Homeland Security shall offer such individuals an opportunity to rejoin the Coast Guard should they wish to do so and meet the current entry standards.

(d) The Secretary of Defense and the Secretary of Homeland Security shall report to me within 60 days of the date of this order on their progress in implementing the directives in this order and the policy described in section 1 of this order.

Sec. 4. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

JOSEPH R. BIDEN JR.

THE WHITE HOUSE,

January 25, 2021.

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